

**LYNCHBURG CITY COUNCIL
Agenda Item Summary**

MEETING DATE: September 28, 2004

AGENDA ITEM NO.: 9

CONSENT:

REGULAR: X

CLOSED SESSION:
(Confidential)

ACTION: X

INFORMATION:

ITEM TITLE: Zoning Ordinance Amendment – Section 35.1-11.4(d), Care Center, Section 35.1-54, Care Centers

RECOMMENDATION: Approval of the requested Zoning Ordinance Amendments.

SUMMARY: At its July 13, 2004 meeting, the City Council requested that the proposed amendment be sent to the September 28, 2004 work session. Council requested information on how the proposed amendments compared to the Zoning Ordinance definition of a home occupation and how many previous Conditional Use Permits for care centers had been approved in residential districts.

The Zoning Ordinance defines a home occupation as “an accessory use that is secondary to the residential use of a dwelling unit,” and “is customarily and traditionally carried on within a dwelling unit by one (1) or more occupants of such dwelling unit, except that in connection with the practice of a profession, one (1) or more person not residing in the dwelling unit may be employed.” A home occupation may not occupy more than twenty-five percent (25%) of the total floor area of a residence and in no case may it occupy more than five hundred (500) square feet of floor area.

The building code requires that an area of twenty (20) square feet be provided per person enrolled in a care center. Based upon the proposed Zoning Ordinance Amendments which would allow up to twelve (12) children by right, a maximum of two hundred and forty (240) square feet per care center would be required. This could be accommodated in a home as small as nine hundred sixty (960) square feet based upon the home occupation maximum of twenty-five percent (25%) of gross floor area. The area required to accommodate twelve children is roughly one half (1/2) of the maximum permissible five hundred (500) square feet allowed for a home occupation.

Since 1979, there have been forty-five (45) CUP petitions related to care centers. Forty-one (41) were approved while four (4) were withdrawn prior to City Council Action. Of the Forty-five (45) all were located in residential districts. However, all of the petitions were filed by churches, non profit organizations or individuals wishing to operate a care center in a residential district, but not maintaining it as their residence.

There are currently eleven (11) state licensed care centers located in residential districts with no CUP approval from the City Council. It appears that all eleven centers are in buildings that also serve as primary residences.

The Planning Commission recommended approval of the proposed amendments because:

- Petition agrees with the *Comprehensive Plan* which recommends amending the Zoning Ordinance to allow conditional uses that are often approved with little or no controversy as uses permitted by right.
- Since 1975 there have been forty-five (45) CUP petitions related to care centers. Forty-one (41) have been approved while four (4) have been withdrawn prior to Council action.
- The proposed amendments are consistent with Chapter 63.2-100 of the Code of Virginia which requires day homes serving six (6) to twelve (12) children to be licensed.

PRIOR ACTION(S):

June 24, 2004: Planning Division recommended approval of the Zoning Ordinance Amendments.
Planning Commission recommended approval 5-0 (with two members absent) of the rezoning.

July 13, 2004: City Council postponed action on the proposed amendments.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902
Tom Martin / 455-3909

ATTACHMENT(S):

- July 13, 2004 City Council Report
- PC Report
- PC minutes
- Licensed Family Day Homes

REVIEWED BY: lkp

**LYNCHBURG CITY COUNCIL
Agenda Item Summary**

MEETING DATE: **July 13, 2004**

AGENDA ITEM NO.: **19**

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Zoning Ordinance Amendment – Section 35.1-11.4(d), Care Center, Section 35.1-54, Care Centers

RECOMMENDATION: Approval of the Zoning Ordinance Amendments

SUMMARY: The proposed Zoning Ordinance Amendments would allow care centers providing day care only for twelve (12) or less persons in a residential setting as a use permitted by right. The Zoning Ordinance currently requires care centers with more than five (5) persons obtain a Conditional Use Permit (CUP) in residential districts.

- Petition agrees with the *Comprehensive Plan* which recommends amending the Zoning Ordinance to allow conditional uses that are often approved with little or no controversy as uses permitted by right.
- Since 1979 there have been forty-five (45) CUP petitions related to care centers. Forty-one (41) have been approved; while four (4) have been withdrawn prior to Council action.
- The proposed amendments are consistent with Chapter 63.2-100 of the Code of Virginia which requires day homes serving six (6) to twelve (12) children to be licensed.

PRIOR ACTION(S):

June 24, 2004: Planning Division recommended approval of the Zoning Ordinance Amendments.
Planning Commission recommended approval 5-0 (with two members absent) of the rezoning.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902
Tom Martin / 455-3909

ATTACHMENT(S):

- Ordinance
- PC Report
- PC minutes

REVIEWED BY:

ORDINANCE

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 35.1-11.4, TERMS BEGINNING WITH "C" AND SECTION 35.1-54, CARE CENTERS OF THE ZONING ORDINANCE, TO ALLOW UP TO TWELVE (12) CHILDREN AS A USE PERMITTED BY RIGHT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

That Sections 35.1-11.4 and 35.1-54, of the Code of the City of Lynchburg, as amended, be, and the same are hereby further amended and reenacted as follows:

Sec. 35.1-11.4. Terms beginning with "C".

Terms used in the zoning ordinance, when defined in this section, shall have the following meaning:

(a) Cemetery: A place used for the permanent commercial interment of dead bodies or the cremated remains thereof. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments or a combination thereof.

(b) Certificate of occupancy: Authorization granted by the city for use of a lot or structure.

(c) Channel: A natural or artificial depression of perceptible extent with a definite bed and banks to confine and conduct flowing water.

(d) Care center: A day nursery, nursery school, day camp, summer camp, family day care home or other place for the reception, care, with or without compensation, of persons of any age. For the purpose of the zoning ordinance, a facility providing day care only to twelve (12) or less than six (6) persons in a residential setting during a twenty-four (24) hour period and meeting the requirements of Chapter 63.2-100 of the Code of Virginia shall not be considered a care center and shall not be subject to the restrictions of this section. Further, the term shall not include any family-type facility which provides child care to not more than five (5) children placed by order of any court of competent jurisdiction, or by any public welfare department or other government agency having responsibility of placing children for care.

(e) Collector street: A public street currently classified as a collector street or programmed for improvement to collector-street status in the most recently approved city major thoroughfare plan.

(f) Commercial building: A building used only for a commercial use.

(g) Commercial use: Any use involving in part or in whole the storage of merchandise, sale of merchandise, materials or services, but not including home occupations, as defined in this Section 35.1-11.8.

(h) Commercial parking garage: See Section 35.1-11.11, Parking garages.

(i) Commercial parking lot: See Section 35.1-11.11, Parking lot.

(j) Community facility use: A public use in private or public ownership run on a nonprofit basis. Examples are: churches, welfare centers, voluntary hospitals, or privately-endowed museums or libraries. Facilities of private, nonprofit membership organizations for use only by members thereof are also community facilities. Examples may be country clubs, golf courses or community swimming pools.

(k) Comprehensive zoning map amendment: An amendment to the official zoning map where any of the following conditions exist:

(1) The area to be rezoned constitutes an entire neighborhood as defined in the comprehensive plan, or a group of such neighborhoods.

- (2) The area to be rezoned includes at least four hundred (400) acres of ground.
- (3) The area to be rezoned includes at least five (5) lots, except where all of the said lots are included in a subdivision to be developed as a whole by one developer.
- (l) Conditional use: A permit to grant restricted use of property for uses other than those permitted by right.
- (m) Conditional zoning or zone: A zoning district or portion thereof, which has been established pursuant to provisions of Article IX of the zoning ordinance and which is subject to reasonable conditions proffered in writing by the owner of the subject property and agreed to by the city council in a zoning action to which such conditions are applicable in addition to those regulations provided for that particular zoning district, or portion thereof, by the overall zoning ordinance.
- (n) Conservation: Any action designed to keep a structure, area containing structures, or places from being damaged, lost or wasted.
- (o) Construction, start of: The date the building permit was issued for new construction or substantial improvements, meaning the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date.
- (p) Court: An open area partly or wholly bounded by buildings, walls, or enclosures.
- (q) Coverage, lot: The proportion of a lot covered by the maximum horizontal projected area of a building and its accessory buildings, including overhangs and projections

Sec. 35.1-54. Care centers.

Care centers providing day care only may be permitted by conditional use permit in residential districts if the following requirements are met:

- (a) All state health department regulations for care centers or kindergartens shall be met.
- (b) For persons over eighteen (18) years of age, there shall be an appropriately enclosed outside recreation area of not less than thirty (30) square feet per person enrolled; for persons eighteen (18) years of age or less, there shall be an appropriately enclosed recreation area of not less than seventy-five (75) square feet per person using the recreation area at any one time.
- (c) The movement of traffic through the street on which the facility is located shall be capable of being controlled to the degree necessary to allow ingress and egress by small children.
- (d) The minimum area and frontage regulations shall be the following in all districts except where the center is a part of a multifamily building or group of buildings:

Number of persons enrolled	Lot size (square feet)	Frontage (feet)
6 to 10	7,000	70
11- 13 to 20	10,000	100
Over 20	500 per person	200

- (e) Screening as specified in Section 35.1-23 of this ordinance shall be provided, for the other perimeter of the parking and of the recreation area.
- (f) Setbacks for the facility shall comply with the applicable zoning regulations of the district in which the facility is located.

(g) Minimum off-street parking and loading space shall be provided as follows:

A minimum of two (2) parking spaces is required for each care center; plus

Two (2) parking spaces for every thirty (30) persons enrolled.

(h) The planning commission may prescribe additional conditions which are necessary or desirable in its judgment.

Adopted:

Certified: _____
Clerk of Council

088L

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission
From: Planning Division
Date: June 23, 2004
Re: **Zoning Ordinance Amendment, Care Center, Section 35.1-11.4(d), Care Center,
Section 35.1-54, Care Centers**

I. PETITIONER

City of Lynchburg, P.O. Box 60, Lynchburg, VA 24504

Representative: Tom Martin, AICP, City Planner, Planning Division, P.O. Box 60, Lynchburg, VA 24504

II. LOCATION

Not Applicable

Property Owners: Not Applicable

III. PURPOSE

The purpose of the Zoning Ordinance Amendments is to allow care centers providing day care only for twelve (12) or less persons in a residential setting as a use permitted by right as is consistent with Chapter 63.2-100 of the Code of Virginia.

IV. SUMMARY

- The Zoning Ordinance Amendments would increase the number of persons permitted by right in a residential care center providing day care only from six (6) to twelve (12) persons.
- The Zoning Ordinance Amendments are consistent with Chapter 63.2-100 of the Code of Virginia which requires day homes serving six (6) to twelve (12) children to be licensed.

The Planning Division recommends approval of the Zoning Ordinance Amendments.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends amending the Zoning Ordinance to allow conditional uses that often approved with little or no controversy to permitted uses. Since 1979 there have been forty-five (45) conditional use permit petitions relating to care centers. Of the forty-five (45), forty-one (41) of the petitions have been approved and four (4) have been withdrawn prior to City Council action. Amending the Zoning Ordinance to permit twelve (12) or less persons in a care center will not eliminate the requirement for a conditional use permit for all care centers but would eliminate administrative procedures at a local level for smaller facilities.
2. **Zoning.** The Section 35.1-11.4(d) Care Center and Section 35.1-54 Care Centers were last revised on July 9, 1991. The revisions limited care centers to "day care" only.
3. **Board of Zoning Appeals (BZA).** Not Applicable.
4. **Surrounding Area.** Not Applicable.
5. **Site Description.** Not Applicable.
6. **Proposed Use of Property.** Not Applicable.
7. **Traffic and Parking.** One impact related to increasing the number of persons allowed by right in a day care center to twelve (12) is traffic. Currently a day care facility allowed by right would have the potential for six (6) am and six (6) pm trips per day. Amending the Zoning Ordinance would create the potential for twelve (12) am and twelve (12) pm trips per day for a facility permitted by right. The City Traffic Engineer had no comments of concern with the proposed Zoning Ordinance amendments.
8. **Storm Water Management.** Not Applicable.

9. **Impact.** Amending the Zoning Ordinance to allow up to twelve (12) persons in a care center by right should not create any negative impacts. Care centers serving over six (6) are required to be licensed by the State of Virginia.

10. **Technical Review Committee.** Not Applicable

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of amending Section 35.1-11.4(d) Care Center and Section 35.1-54 Care Centers of the Zoning Ordinance to allow twelve (12) or less persons in a care center as a use permitted by right as is consistent with Chapter 63.2-100 of the Code of Virginia.

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas Dejarnette, Fire Marshal
Ms. Judith C. Wiegand, AICP, Senior Planner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official

VII. ATTACHMENTS

1. Zoning Ordinance Amendments
(see attached Ordinance)

MINUTES FROM THE JUNE 23, 2004 PLANNING COMMISSION MEETING
The minutes have been reviewed by staff, but not the Planning Commission

Consideration of amending Section 35.1-11.4 (d), Care Center and Section 35.1-54, Care Centers of the Zoning Ordinance to allow up to twelve (12) children as a use permitted by right as is consistent with Chapter 63.2-100 of the Code of Virginia.

Mr. Martin explained that Child Care facilities with six or more children were required to be licensed by the State of Virginia as required by Chapter 63.2-100 of the Code of Virginia. He said these facilities were regularly checked by the State Division of Licensing and the Alliance for Families and Children. He said the proposed Ordinance Amendments were consistent with the Comprehensive Plan which recommended amending the Ordinance to allow conditional uses by-right, which were often approved with little or no controversy. He added that outlined in the Planning Division's report there have been forty-five (45) Conditional Use Permit petitions for child-care facilities, with forty-one (41) of those having been approved and with four (4) of them having been withdrawn prior to Council action. Mr. Martin said the only thing related to child care facilities that could become an issue with increasing the number of children could be the amount of traffic going to a facility. He said he did not believe that twelve (12) children would be any noisier than six (6) children. The City's Traffic Engineer had no comments of concern with the proposed Ordinance revision, and the Planning Division recommended approval.

Ms. Cynthia Kirkland, Assistant Director of Social Services, spoke in support of this amendment to the Ordinance. She said the child day-care homes and centers provided a valuable service not only to the citizens in Lynchburg, but also the citizens served through Social Services. She added that for them to have twelve (12) children, they had to be licensed by the State, and were regularly checked by the Alliance for Families and Children as well as by the State. Ms. Kirkland said Social Services was not involved in the licensure of the facilities but with the quality of the homes they used to assist with day-care. She noted that Social Services was in the homes on a regular basis over the course of a year checking the quality of service the caretakers provide. Ms. Kirkland requested the Commission's support of this amendment revision.

Commissioner Hamilton asked Ms. Kirkland if the state licensure was enough without the City being involved in the process.

Ms. Kirkland said she was not an expert, but her personal opinion was that the State focused on the facility itself as opposed to the services that were provided in the facility, which was what this amendment addressed.

Chair Dahlgren asked for clarification of the current practice and the proposed changes.

Mr. Martin said they would still need to be licensed by the State regardless of the number of children. He said currently the Ordinance limits the number of children to 6 and if they want more than 6 children, they have to come to Planning Commission for a CUP to increase that number. He added that the current Ordinance created another step in the process that was already being regulated by the State of Virginia. Mr. Martin explained that the City process made sure there were appropriate parking spaces and appropriate size play areas, which the State also looked at. He said the idea was that if the State was already licensing these facilities, then the facilities were already being inspected on a regular basis, so the City could let the State handle the entire process.

Chair Dahlgren asked if the State required more parking spaces at a facility or larger play lots, who followed up to make sure those requirements were carried out.

Mr. Martin said his understanding was that it was the responsibility of the Division of Licensing to inspect the facilities.

After discussion, Commissioner Pulliam made the following motion, which was seconded by Commissioner Flint and passed by the following vote:

"That the Planning Commission recommends to the City Council approval of amending Section 35.1-11.4(d) Care Center and Section 35.1-54 Care Centers of the Zoning Ordinance to allow twelve (12) or less persons in a care center as a use permitted by right as is consistent with Chapter 63.2-100 of the Code of Virginia."

AYES:	Dahlgren, Echols, Flint, Hamilton, Pulliam	5
NOES:		0
ABSTENTIONS:		0

Sec. 35.1-11.4. Terms beginning with "C".

Terms used in the zoning ordinance, when defined in this section, shall have the following meaning:

- (a) Cemetery: A place used for the permanent commercial interment of dead bodies or the cremated remains thereof. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments or a combination thereof.
- (b) Certificate of occupancy: Authorization granted by the city for use of a lot or structure.
- (c) Channel: A natural or artificial depression of perceptible extent with a definite bed and banks to confine and conduct flowing water.
- (d) Care center: A day nursery, nursery school, day camp, summer camp, family day care home or other place for the reception, care, with or without compensation, of persons of any age. For the purpose of the zoning ordinance, a facility providing day care only to twelve (12) or less than six (6) persons in a residential setting during a twenty-four (24) hour period and meeting the requirements of Chapter 63.2-100 of the Code of Virginia shall not be considered a care center and shall not be subject to the restrictions of this section. Further, the term shall not include any family-type facility which provides child care to not more than five (5) children placed by order of any court of competent jurisdiction, or by any public welfare department or other government agency having responsibility of placing children for care.
- (e) Collector street: A public street currently classified as a collector street or programmed for improvement to collector-street status in the most recently approved city major thoroughfare plan.
- (f) Commercial building: A building used only for a commercial use.
- (g) Commercial use: Any use involving in part or in whole the storage of merchandise, sale of merchandise, materials or services, but not including home occupations, as defined in this Section 35.1-11.8.
- (h) Commercial parking garage: See Section 35.1-11.11, Parking garages.
- (i) Commercial parking lot: See Section 35.1-11.11, Parking lot.
- (j) Community facility use: A public use in private or public ownership run on a nonprofit basis. Examples are: churches, welfare centers, voluntary hospitals, or

privately-endowed museums or libraries. Facilities of private, nonprofit membership organizations for use only by members thereof are also community facilities. Examples may be country clubs, golf courses or community swimming pools.

(k) Comprehensive zoning map amendment: An amendment to the official zoning map where any of the following conditions exist:

(1) The area to be rezoned constitutes an entire neighborhood as defined in the comprehensive plan, or a group of such neighborhoods.

(2) The area to be rezoned includes at least four hundred (400) acres of ground.

(3) The area to be rezoned includes at least five (5) lots, except where all of the said lots are included in a subdivision to be developed as a whole by one developer.

(l) Conditional use: A permit to grant restricted use of property for uses other than those permitted by right.

(m) Conditional zoning or zone: A zoning district or portion thereof, which has been established pursuant to provisions of Article IX of the zoning ordinance and which is subject to reasonable conditions proffered in writing by the owner of the subject property and agreed to by the city council in a zoning action to which such conditions are applicable in addition to those regulations provided for that particular zoning district, or portion thereof, by the overall zoning ordinance.

(n) Conservation: Any action designed to keep a structure, area containing structures, or places from being damaged, lost or wasted.

(o) Construction, start of: The date the building permit was issued for new construction or substantial improvements, meaning the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date.

(p) Court: An open area partly or wholly bounded by buildings, walls, or enclosures.

(q) Coverage, lot: The proportion of a lot covered by the maximum horizontal projected area of a building and its accessory buildings, including overhangs and projections. (Ord. No. O-90-047, 2-13-90; Ord. No. O-91-168, 7-9-91)

Sec. 35.1-54. Care centers.

Care centers providing day care only may be permitted by conditional use permit in residential districts if the following requirements are met:

- (a) All state health department regulations for care centers or kindergartens shall be met.
- (b) For persons over eighteen (18) years of age, there shall be an appropriately enclosed outside recreation area of not less than thirty (30) square feet per person enrolled; for persons eighteen (18) years of age or less, there shall be an appropriately enclosed recreation area of not less than seventy-five (75) square feet per person using the recreation area at any one time.
- (c) The movement of traffic through the street on which the facility is located shall be capable of being controlled to the degree necessary to allow ingress and egress by small children.
- (d) The minimum area and frontage regulations shall be the following in all districts except where the center is a part of a multifamily building or group of buildings:

Number of persons enrolled	Lot size (square feet)	Frontage (feet)
6 to 10	7,000	70
11- 13 to 20	10,000	100
Over 20	500 per person	200

- (e) Screening as specified in Section 35.1-23 of this ordinance shall be provided, for the other perimeter of the parking and of the recreation area.
- (f) Setbacks for the facility shall comply with the applicable zoning regulations of the district in which the facility is located.
- (g) Minimum off-street parking and loading space shall be provided as follows:

A minimum of two (2) parking spaces is required for each care center; plus

Two (2) parking spaces for every thirty (30) persons enrolled.
- (h) The planning commission may prescribe additional conditions which are necessary or desirable in its judgment. (Ord. No. O-89-201, § 1, 7-11-89; Ord. No. O-91-168, 7-9-91)

Code of Virginia

Chapter 63.2-100. Definitions

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. *Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed.* However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.